

**TESTIMONY FOR THE  
Senate Committee on Indian Affairs  
April 20, 2011  
Central Wyoming College  
Robert A. Peck Auditorium  
submitted by  
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Eastern Shoshone Business Council**

Honorable Sen. Barasso, distinguished guests and Committee Staff and Counsel, it gives me pleasure to come before you today to offer comments relating to the Wind River Irrigation Project (“Project”) and other management problems. Let me begin by noting that for all things living on this Great Earth water is our lifeblood. As, Tribes we strive to maintain our culture, tradition and spiritual beliefs, and water is that special resource that sustains us and allows us to take our place destined to provide a positive future and hope and energy to our people.

Governmental beginnings began with the signing of the Treaty of 1863, whereby the Shoshone Tribe was designated over 44,000,000 acres of land. This Treaty was followed by subsequent Treaty’s which narrowed our land base to the present day acreage of approximately 2.2 million acres. The problems started with Congress’ passage of the Reclamation Act of 1902 whereby well over a million acres of this Reservation were opened up to homesteading. This brought a morass of issues, challenges and affronts to tribal sovereignty which we now confront on almost a daily basis!

From 1905 to the present Bureau of Reclamation’s attention and resources were devoted mainly to the homesteaders. Since 1905, over \$77,000,000 has been put into irrigation works and structures north of the Big Wind River while a paltry \$6,000,000 has been put into the BIA Project! Indian moneys that were earmarked for Indian Irrigation Improvements were diverted to the Reclamation Fund thus the huge disparity. In addition, Bureau of Reclamation exploited tribal resources without proper consent and approval and the Tribes just recently were awarded \$33,000,000 for partial compensation of this misdeed. Another affront to the Federal/Tribal trust relationship is the Bureau of Reclamation’s stance that Section 8 of the 1905 Act requires them

to administer tribal trust resources according to State Law! Virtually all Tribes in this country would oppose this infringement upon a valuable trust resource.

Based on the history surrounding the BIA and Reclamation Projects, the Joint Business Council and the Wind River Water Resources Control Board have four major consequences of federal and state management in the Wind River Basin that will require extensive research and investigation. These are:

1. Federal appropriation (condemnation) of Tribal reserved water rights to serve non-Indian irrigation and hydropower interests.
2. Use of Tribal funds to construct major federal and non-federal irrigation, storage and hydropower facilities in the Wind River basin (1906-1942).
3. Diversion of Tribal revenues into the US Treasury for use in repaying costs of the irrigation project, O&M on existing canals and surveying costs of the Riverton Reclamation Project from 1906-1942.
4. Diversion of Tribal water by the State of Wyoming based on use of Wyoming water law to declare surplus conditions, depriving the Tribes of the use of their water resources from 1989 until the present.

The federal and state use of tribal water and tribally-funded irrigation and power facilities has deprived the Tribes of the exercise of their rights to manage and use the water for their economic development and community well-being. In addition, these actions and the diversion of tribal funds have resulted in environmental damage, economic damage and lost opportunities for Tribal economic development. Research indicates that the users have overpaid O&M fees for the Wind River irrigation project. Initial legislation authorizing the Riverton Project (1905, formerly the 'Wind River Irrigation Project', no relation to the Tribal system) specified that the Tribes were only to pay \$150,000 – in a one-time payment - for O&M fees for the Tribal system. This could mean the Tribes have overpaid - the O&M fees for the Wind River Irrigation Project by millions of dollars.

My initial stint as an elected official of the Shoshone Tribe began in 1979, not too long after the State of Wyoming filed the Big Horn Adjudication in 1977. These water wars made us realize the extreme importance of exercising tribal sovereignty wisely to protect our people and their

future. Essentially, there are two major activities that must begin immediately in order to fully pursue the diversion of Tribal water and funds:

1. Research and strategy development on headwaters issues, including economic, environmental, legal, social, cultural and political impacts of the diversion of Tribal water.
2. Continued strengthening and reorganization of the Tribal water management function, including the Office of the Tribal Water Engineer and Wind River Water Resources Control Board.
3. Inclusion of the Federal government in these endeavors.

We have been building our technical and administrative capabilities to make stronger our tribal government and strengthen families and communities to bring progress and positive economic impact to our Reservation and our region. As you well know, sir, Wind River is a smaller version of Wyoming. Energy development, agriculture and livestock, recreation and tourism, and governmental sector jobs are the bulk of our economy. The further development of non-renewable resources and renewables - wind, solar, geothermal, biomass and hydropower - allows us a major role to play in the energy security of this nation as well as reducing our dependence on foreign energy sources. The most important resource in future growth and advancement is water!

Our purpose today is to bring respect and dignity to the trust obligation. When our forefathers signed the treaties asserting our homelands it was not a grant of rights to us, but a grant of rights from us! The permanent homelands established by treaty were meant to uphold the intent of allowing tribal life to evolve over time and embark on a path assuring livelihood and ability to advance in civilization.

The General Accounting Office's Reports of July 3, 1996 and February 2006 address various issues surrounding the allocation and repayment of the costs of constructing federal water projects, including the allocation of these costs among the projects' various purposes and irrigator's repayment of their share of costs. We have testified over the decades at many sessions

of the Senate Select Committee on Indian Affairs and now the Senate Committee on Indian Affairs, all to no avail. It is my solemn wish that this distinguished Committee, with leadership and foresight, begin a deliberative process to, not only ensure that the sovereign Indian Nations of this country have reliable sources of clean water, but to also acknowledge the trust obligations that exist in relation to the most critical of resources – water!

Attachments: -Letter from Bureau of Indian Affairs acknowledging Wind River Water Code of the Shoshone and Arapaho Tribes  
-Wind River Water Code  
-Water Management Plan of the Eastern Shoshone & Northern Arapaho Tribes